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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/734,803	12/12/00	HICKLING M	20526/111695

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EXAMINER	
GOLLAMUDI, S	
ART UNIT	**PAPER NUMBER**
1616	3

DATE MAILED: 10/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/734,803	HICKLING, MAURICE RAYMOND	
	Examiner	Art Unit	
	Sharmila S. Gollamudi	1616	

-- The MAILING DATE of this communication appears on the c ver sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 December 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☒ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
18)☐ Interview Summary (PTO-413) Paper No(s). _____ .
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other: .

DETAILED ACTION

Claims 1-12 are included in the prosecution of this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 8 contain the trademark/trade name TWEEN and ARIANOR respectively. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe polysorbate 20 and anthraquinone dyes and, accordingly, the identification/description are indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al in view of Krutak et al (5951718).

Ribier et al disclose a cosmetic or dermatological composition containing phytantriol and a dispensing agent (polysorbate). Ribier et al teach the use of active ingredients such as semi-permanent hair dye in the composition. Ribier et al disclose the process of mixing the phytantriol in a dispersing agent and an active ingredient. Further, the reference discloses the application of the composition on the area that is to be treated.

Ribier et al do not disclose the specific use of anthraquinone dyes or the instant amount of hair dye.

Krutak et al disclose the use of anthraquinone dyes and the several colors that it imparts on the hair and the instant amount (col 7, line 6 and examples).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Ribier et al and Krutak et al since Ribier et al disclose the use of semi-permanent dyes and Krutak et al disclose that an anthraquinone dye is a semi-permanent dyes known in the art (col 6, lines 34-38). One would be motivated to do so since Krutak et al teach the instantly claimed colors and disclose that anthraquinone's low glass transition temperature that makes the composition resistant to color bleed (example 36).

Claim 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al cited above, in further view of Wenke et al (5628799).

Ribier et al disclose a cosmetic or dermatological composition containing phytantriol in a dispensing agent. Ribier et al teach the composition containing an active agent such as a permanent hair dye with an oxidation coupler and base.

Although Ribier et al teach permanent hair dye as an active, Ribier et al do not teach a specific hair dye kit where the primary reactor (oxidizing agent) and secondary reactor (coupler) are in separate packs. Ribier et al disclose the instantly claimed amount of phytantriol.

Wenke et al disclose a hair dye kit in which the oxidizing agent and a coupler are premeasured in different containers and mixed together by the user (col 11/12 line 65 through 10). Wenke et al disclose the instant amount of oxidizing agent and coupler (col 13, lines 38-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Ribier et al and Wenke et al since Ribier et al provides general guidance of a phytantriol composition with a permanent hair dye and Wenke et al teach a permanent dye and the general use of it. One would be motivated to do so since a desirable hair color product would be yielded where the phytantriol would provide for a hydrating color and the premeasured kit would allow for correct mixing/use by the consumer (col 12, line 27-30).

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG

JOSE G. DEES
SUPERVISORY PATENT EXAMINER

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